IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

M/s. Ajay Type Writers Vs. Dhanpat Raj

S.B.CIVIL SECOND APPEAL No.87 of 2001

Date of judgment : 09 October,2006

PRESENT
HON'BLE SHRI N P GUPTA,J.

Mr. M.C.Bhoot, for the appellants.
Mr. Manish Shishodia, for the respondents.

BY THE COURT:
REPORTABLE

This is a defendant's appeal, in a suit for eviction, decreed by both the learned courts below, on the ground of reasonable and bonafide necessity.

The facts of the case are, that the plaintiff filed the present suit for eviction, alleging interalia, that the property described in para-1 of the plaint belonged to one Hastimal. This comprises of two shops on the ground floor, being shops no. 2 and 3, which were purchased along with second storey, by the plaintiff, and the first storey was purchased by the plaintiff's father, from said Hastimal, by separate registered sale deeds. Both the shops belong to plaintiff, the first storey is of the

ownership of the plaintiff's father, while the second storey is in the ownership of plaintiffs, and that plaintiff and his father live in the upper storey, above the two shops. With this it was alleged, that the defendant had become defaulter, as he had taken the shop on rent at a monthly rent of Rs. 125/-, and had paid rent upto 30.9.1990. The plaintiff's father is aged 65 years, and is a cardiac patient, having blood pressure also. Earlier the father was carrying on business in the name and style of M/s. Ganeshmal Bhanwarlal, in the premises of plaintiff's uncle's son Narpat Chand. That firm has been closed, and the premises have been handed over to Narpatchand, since 31.3.93. Thereafter the plaintiff's father started cloth business in the name and style of M/s. Bhanwarlal Dhanpatraj, as sole proprietor, in another shop at Katla, on the first storey, as he could not get any other shop. While that shop is not in any manner suitable, looking to the old age, and cardiac ailments of the plaintiff's father, and it is a consistent health hazard to the plaintiff's father. According to the plaintiff, the suit shops have no wall in between, are practically one shop, are most convenient, and appropriate, for plaintiff's father’s business, as he lives in this very building, and will not have to climb stairs, and will be assisted by the family members, as well, the plaintiff's father has sufficient experience. In view of the present shop being on the first floor, customers cannot approach conveniently.

The factor of distance between shop, where the plaintiff's father is carrying on business, and the residence, was also pleaded. It was pleaded, that it would be convenient, more so when, the defendant's house is at a distance of 8 Kms. Interalia with this, a decree for eviction was prayed.

The defendant filed the written statement on 12.9.1995, contesting the suit. The plaintiff and his father having purchased upper stories, was denied, for want of knowledge. The fact about the shops having been purchased by the plaintiff was admitted. It was admitted that on the upper storey above shops no. 2 and 3, the plaintiff and his father resides. Then, allegation of default was denied. It was pleaded that after September, 1990 rent was offered, but the plaintiff did not willfully receive, rather exerted pressure to increase rent to Rs. 700/-. Then, it was sent by money order also, which were refused to be received. It was pleaded, that there is a sub-meter, but the defendant has obtained a separate meter, and separate electricity connection. Therefore, there was no question of payment of any electricity charges. Then, regarding bonafide necessity, it was denied that plaintiff's father is having any heart ailment, and therefore any requirement was denied. It was denied that plaintiff's father was earlier carrying on partnership business in the name and style of M/s. Ganeshmal Bhanwarlal in the shop of Narpatchand, or that firm has been closed,

and the possession of the premises had been redelivered to Narpatchand. It was also denied, that the plaintiff has started fresh cloth business in the name and style of M/s. Bhanwarlal Dhanpatraj, as a sole proprietor, for want of knowledge. The allegation about plaintiff's father having not got any other shop, or the shop where he is carrying on business is not appropriate, or was suffering from any heart ailment, so as not to be able to carry on business on the first floor, were all denied as baseless. It was contended, that as a matter of fact the plaintiff's father does not require suit shop, and that plaintiff's father is carrying on whole sale business in the main market, which is a whole sale cloth mandi in Jodhpur, and business is going on very well. It was then denied, that plaintiff's father has any requirement of the suit shop. Likewise, pleading about comparative hardship was also denied. It was also pleaded, that the plaintiff's father has many servants in the shop, while the defendant is carrying on business in the suit shop for the last about 20 years, and the defendant lives in the housing board, and cannot get any other shop. It was also pleaded, that the plaintiff's father is earning lacks of rupees every year. It was contended, that the plaintiff does not require the suit shop, and his father lives separately from the plaintiff's family, and has separate business in the main market Jodhpur, itself. Thus the plaintiff's father does not have any reasonable and bonafide necessity of the suit shop.

Inter-alia with these pleadings, it was prayed, that the suit be dismissed.

The learned trial Court decided all the four issues, relating to default, reasonable and bonafide necessity, comparative hardship, and partial eviction, against the defendant. It was inter-alia found, that even according to the defendant, the shop in which the plaintiff's father carries on business, measures about 10 x 25 ft, while the suit shops collectively measure 14 x 10 ft., and thus, the reasonable and bonafide necessity of the plaintiff's father was found to be proved, and accordingly the suit was decreed.

The learned lower Appellate Court upheld these findings. It was contended before the learned lower Appellate Court, that it has nowhere been the allegation of the plaintiff, that the plaintiff's father is a member of his family, nor any issue in this regard has been framed, nor any finding has been given by the learned trial Court, while even according to para-2 of the plaint, it is clear, that the plaintiff and his father owns separate property, on different floors, and according to para-6, the plaintiff's father was earlier carrying on business in partnership, while now he is carrying on business in sole proprietorship. It was also contended, that ordinarily the expression “family” means, spouse and children, and thus,

the learned trial Court was in error in passing the decree, treating the plaintiff's father to be a member of his family, and on account of his requirement. It was also contended, that it was required for the plaintiff, to specifically plead and prove, that his father is member of his family; while on the side of the plaintiff, it was contended, that only sum and substance of the facts is required to be pleaded, and the defendant is also required to plead all his facts, on the basis of which suit can be dismissed, but the defendant has nowhere pleaded, that the plaintiff's father was not a member of his family, and merely because plaintiff and his father separately owned property, and have separate business, it cannot be said, that they constitute different families. Couple of judgments were cited on either side, and the learned lower Appellate Court found, that it is nowhere pleaded in the written statement, that the suit cannot be maintained on the basis of the requirement of the plaintiff's father, because plaintiff's father is not member of his family, while according to the judgment cited on behalf of the plaintiff, ordinarily father and son shall be taken to be member of the same family, and therefore, till the defendant proves, that the plaintiff's father was not member of his family, it cannot be said, that there is any error in decreeing the suit, for the requirement of plaintiff's father. Then after considering the material on record, the findings on issue No.2, 3 and 4 were upheld and

thus, the appeal was dismissed.

Assailing the impugned judgment, the only contention raised was, that Bhanwar Lal cannot be said to be member of plaintiff's family, nor has it been so pleaded by the plaintiff, and since under Section 13(1)(h) of the Rajasthan Premises (Control of Rent & Eviction) Act, hereafter referred to as the Act, the decree for eviction can be prayed only on account of reasonable and bonafide necessity of plaintiff, for himself, or for any member of his family, and the language of Section 13(1)(h) does not contemplate entitlement of the plaintiff to claim eviction on the ground of reasonable and bonafide necessity of any of the relatives of the plaintiff, therefore the impugned decree is bad. Reliance was placed on the judgment of Hon'ble the Supreme Court, in Roshan Lal & Anr. Vs. Madan Lal & Ors., reported in 1975(2) SCC 785, and the judgment of this court, in Radhavallabh Vs. Darmodardas, reported in 1964 RLW 587, another judgment of Hon'ble Supreme Court in K.V.Muthu Vs. Angamuthu Ammal reported in (1997) 2 SCC-53, Deoki Nandan Vs Murlidhar & Ors., reported in AIR 1957 SC 133, Joginder Pal Vs. Naval Kishore Behal, reported in 2002 (5) SCC 397, Hardev Vs. Jaidev through his legal representatives, reported in 2000(3) RLR 240, and Baldev Sahai Bangia Vs. R.C. Bhasin, reported in AIR 1982 SC 1091, and it was contended, that since on the face of it rather admittedly the plaintiff and his father separately own

property, have separate business, and have separate income, they cannot be said to be constituting one family, nor can Bhanwar Lal be said to be member of plaintiff's family.

Learned counsel for the respondent, on the other hand contended, that in para-3 of the written statement, the defendant has admitted, that the plaintiff's father lives with the plaintiff, and there is no material on record to show, in the pleadings, or in the evidence, that the plaintiff's father is not a member of the plaintiff's family. Then it was pointed out, that in the judgment of Hon'ble the Supreme Court in Hardev's case, father has also been shown to be included in the family.

I have considered the submissions. To start with I may make it clear, that in view of the submissions made by the learned counsel for the parties, this much, at least, is clear, that the question about the requirement of the shop by Bhanwar Lal, the aspects of comparative hardship, and partial eviction, are no more under challenge, and the challenge is only to the effect, that the plaintiff could not maintain suit for eviction, on the ground of requirement of his father, as father cannot be said to be member of the family of the plaintiff, and therefore, it cannot be said, that the premises are required, reasonably and bonafide, by the plaintiff, for his own use and occupation, or for the use and occupation of any member of

his family.

Obviously the expression “family” has not been defined under the Act. On the side of the appellant, reference was made to para-7 of the written statement, wherein it was pleaded, that plaintiff's father Bhanwar Lal lives separately from the plaintiff's family, and carries on business separately, while the learned counsel for the respondent referred to para-3 of the written statement, wherein the defendant had admitted, that on the storey above the suit shop, the plaintiff and his father live.

I may now refer to cases cited by the learned counsel for the appellant. Roshan Lal's case related to the question of validity of decree, passed on compromise, and the question gone into was, as to whether from the pleading and compromise, any of the ground for eviction is made out, so as to uphold the compromise. Thus, this judgment has been cited only for the purpose of contending, that irrespective of the fact, that by virtue of Order 23 Rule 3 compromise decree can be obtained, still if the decree is for eviction, then until and unless one or more of the grounds, contemplated by rent control legislation, are made out, decree for eviction cannot be executed. In my view, this legal proposition does not admit any doubt; therefore, it need not detain me any more. In Radhavallabh's case it was held, that the word “family” has to be given a broad

interpretation. In that case, the question was, as to whether the nephew, living in the circumstances of that case, could be taken to be a member of uncle's family. The facts of that case, according to the plaintiff were, that he is a member of joint Hindu family, consisting of himself, his brother and his father, he carries on business separately at Jaipur, he has purchased a shop from his own income, and it is his exclusive property, the landlord had four children of his own, his nephew Radheshyam lives with landlord for the last 12 or 15 years, who was aged about 27-28 years. He was unemployed and dependent on landlord. It was admitted, that Radheyshyam's father was alive, and landlord did not make any contribution towards the expenses of his nephew's marriage. On his part Radheyshyam admitted, that he carried on his earlier iron business in some other premises, and that he had taken them on rent, in his own name. It was on these facts, that it was held in para-6, that there is no definition of “family”, and it's primary meaning is children, but that may be too narrow an interpretation. It does not appear to be a pre-requisite of a “family”, and the word appears to have been used in its ordinary popular sense, and not as a technical term. A broad common sense view, taken with due regard to the facts and circumstances of each case including the social order, the habits, the customs, and the ideas of living of the community, would, therefore, be the most appropriate, for the purpose of deciding, as to whether a person is a member

of another family or not. Then various English cases were referred to. Then few judgments of Indian Courts were also considered, and then in para-16 it was held as under:-

> "16. As I have stated earlier, a perusal of all these cases leads me to conclude that a broad common sense view, taken with due regard to the facts and circumstances of the case, would best answer the point in controversy. I would therefore pose to myself the question: would an ordinary man, addressing his mind to the question whether Radhey Shyam was a member of the landlord's family, answer "Yes"?"

Then after considering various circumstances, mentioned in para-17, the answer was given against the plaintiff, and the circumstances considered were, Radheyshyam not being son of landlord, and the question being whether there are any special circumstances, which require an affirmative answer, and it was considered, that landlord admittedly has four children, landlord did not make any contribution towards the marriage of Radheyshyam, Radheyshyam's father was alive, there is nothing to show, that Radhesysham is one of the heirs of the landlord, and landlord has not even stated, that he will invest any money to establish his nephew in the new business to be started in the suit premises; not even, that he will not charge any rent from him. With this, it was found, that uncle and nephew are therefore members of the same family or stock, and no more. The ordinary man would therefore have no hesitation in giving the answer, that Radhey Shyam is not a

member of the landlord's family. Thus, according to this judgment, a broad common sense view, with due regard to facts and circumstances of the case, is required to be taken, to arrive at a particular conclusion, as to whether an ordinary man would conclude, one way or the other. In Deoki Nandan's case, the question involved was, as to whether an endowment is public or private, and then, to examine in the light of those principles, on the facts found or established, the distinction between a private and a public trust is, that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public, or a class thereof. While in the former the beneficiaries are persons, who are ascertained, or capable of being ascertained, in the latter they constitute a body, which is incapable of ascertainment. The court went into the question, as to whether that endowment was for the family or the public. In my view, this judgment is not of any assistance on the point in controversy involved in the present suit. In Baldev Sahai's case, the facts were, that the tenant was living in tenanted house with his father, mother, two sisters, and a brother. Subsequently the tenant shifted permanently to Canada, followed by his wife and children. While leaving for Canada, the tenant had left his mother and brother in the house, who were regularly paying the rent to the landlord. In these circumstances, application for eviction was filed, on the ground of non-residence of the tenant. It was

alleged, that with exit of the tenant, it became vacant, and his mother and brother, who were left behind, could not be treated as members of the family. On those facts, it was held, that the word “family” has to be given, not a restricted, but a wider meaning, so as to include, not only the head of the family, but all members or descendants from the common ancestor, who are actually living with the same head, and a beneficial provision must be meaningfully construed, so as to advance the object of the Act, and curing any lacuna or defect, appearing in the same. Thus the term “family” must always be liberally and broadly construed, so as to include near relations of the head of the family. In that case, ultimately, the mother and brother of the tenant were treated to be members of his family, and the order of eviction was set aside by Hon'ble the Supreme Court, and the order of dismissal passed by Rent Controller was restored. Obviously, the mother and the brother could not be said to be the descendants of the tenant, and were members of the descendancy from a common ancestor, who were actually living with same head. It was noticed, that in our country, blood relations do not evaporate, merely because, member of the family, the father, brother, or the son, leaves the household, and goes out for some time. Thus in my view, this judgment better support the case of the plaintiff than that of the appellant. In Joginder Pal's case, the landlord required the premises for the office of his son, who was chartered

accountant, residing with him, and the question depended on the interpretation of the expression "his own use", as to whether the requirement for the son, can be said to be the requirement for his own use, and it was held, that the expression cannot be given narrow construction, rather it must be assigned a wide, liberal, and useful meaning. The requirement is not the requirement of the landlord alone, in the sense, that the landlord must, for himself, require the accommodation, and to fulfill the requirement, he must himself physically occupy the premises. The requirement of a member of the family, or of a person on whom the landlord is dependent, or who is dependent on the landlord, can be considered to be the requirement of the landlord, for his own use. In my view, the words in the relevant Rent Control Legislation were much narrower, than as contained in our legislation, inasmuch as under Section 13(1)(h) of the Act, suit for eviction can be maintained even for the requirement of the members of the family of the landlord, while under the East Punjab Urban Rent Restriction Act, the suit could be filed only if the premises were required for his own use by the landlord, and even interpreting that expression, it was held, that expression is not to be construed narrowly, and includes requirement of the member of the family, so also of a person, on whom the landlord is dependent, or who is dependent on the landlord, and then, the decree for eviction was maintained. In my view, this judgment thus, also does not help the appellant. I am not

able to persuade myself to agree with the submission, that this judgment holds, that in order to be called to be the member of family, either the person concerned should be dependent on the owner, or the owner should be dependent on him. Rather this is an additional consideration to include such person within the category of persons for whose requirement, eviction can be prayed for. Then coming to the judgment of Hardev's case, that was a case, where the question was, as to whether, in cases where the tenant allows his mother and brother's wife to look after his business, on a rented premises, can be said to have parted with possession of premises, so as to entail liability of eviction. In that context, it was considered, that interest and welfare of the family is the core of the expression "as a member of the family", used in Section 3(vii)(b), and that, broadly speaking, "as a member of family" would include a person's wife/husband and children, his or her parent, brothers, sisters, brother's wife, widowed daughter or her children, deceased brother's wife or children being dependent, on contractual tenant or statutory tenant, having joint proprietary interest. Then it was also held, that said list of family members is only illustrative, and not exhaustive. In my view, this judgment again, on the other hand, clearly holds, to include the parent in definition of the "family".

So far the judgment of Hon'ble the Supreme Court

in K.V.Muthu's case is concerned, in that case the application for eviction was filed on the ground of personal need. It was contended in the application that her husband together with the plaintiff had brought up one A who was son of his real brother as their son, and member of their family, her husband having died leaving behind will in which it was specified that A was brought up by him and it was through him that he was carrying on the lime-shell business. Then, various other recitals of will were pressed into service, and thus the application was filed which was contested on the ground that A was not the natural son, and consequently he would not be a "member of the family". ON these facts Hon'ble the Supreme Court considered that the relevant Act of Tamil Nadu defined the expression "member of his family" to mean spouse, son, daughter, grandchild or dependant parent. Then, Hon'ble the Supreme Court also referred to ordinary meaning of the term "family", and ultimately it was held that A was member of the respondent's husband's family within the meaning of Section 2(6-A) of that Act, and the application was found to be maintainable. Obviously, since in the Tamil Nadu Buildings (Lease and Rent Control) Act the expression "member of his family" was defined which is not defined in the Rajasthan Act, that judgment is not of any assistance to the appellant.

Thus, from a reading of the above judgments,

rather it is clear, that the father, ordinarily would be included in the “family” of the plaintiff, unless there are circumstances, to show the state of affairs to be otherwise. Significantly, in para-3 of the written statement, the defendant has admitted the plaintiff and his father to be living together. Then in cross-examination of the plaintiff not a word has been suggested, about the father, either living independently, or separately, in such circumstances, so as not to fall within the family of the plaintiff, nor a word has been deposed in this regard, by the defendant, in his statement.

True it is, that in the plaint, the plaintiff has not specifically taken a positive plea, that plaintiff's father is a member of the plaintiff's family, but then, the fact also remains, that the suit was filed for eviction on the ground of reasonable and bonafide requirement of the plaintiff's father, facts and circumstances in that regard were cataloged, and parties had gone to trial, with the consciousness about the reliefs, and the question as to whether the plaintiff's father can be said to be member of the plaintiff's family or not. As such, when it is admitted in written statement, in para-3, that the plaintiff's father lives with the plaintiff, and nothing was suggested to the plaintiff in this regard, nor anything was deposed by the defendant, in my view, it cannot be said, that the learned Lower Appellate Court was wrong in negativing this

contention of the appellant.

The appeal thus, has no force and is dismissed summarily.

(N P GUPTA),J.

/Sushil/